

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Minnesota Power's Petition for
Approval of Affiliated Interest Agreement and
Assignment of LTV Transmission Facilities
from Rainy River-Taconite Harbor to
Minnesota Power

ISSUE DATE: May 22, 2002

DOCKET NO. E-015/AI-01-1648

ORDER APPROVING PETITION WITH
MODIFICATIONS

PROCEDURAL HISTORY

On November 1, 2001, Minnesota Power (MP) filed a petition (the Petition) for approval of (1) MP's affiliated interest agreements with Rainy River Energy Corporation - Taconite Harbor (RRTH) and (2) MP's purchase of transmission assets from LTV Steel Mining Company (LTV). The transmission assets MP will be purchasing include, among other things, the 62-mile long 138 kV double circuit transmission line from Taconite Harbor to Hoyt Lakes and all of the transmission facilities located in the Taconite Harbor Substation that are on the high-side of the step-up transformers (Transmission Facilities). This Petition arises out of LTV's bankruptcy proceeding and its decision to sell substantially all of its Minnesota assets to RRTH and a subsidiary of Cleveland Cliffs, Inc. (Cliffs), effective October 30, 2001.

On December 20, 2001, the Department of Commerce (DOC) filed comments recommending, among other things, that the Commission approve the assignment and allocated acquisition cost of the LTV Transmission Facilities transfer from LTV to MP.

On January 23, 2002, the Minnesota Office of Iron Range Resources and Rehabilitation Board (IRRRB), the Minnesota Pollution Control Agency (MPCA), and the Minnesota Department of Natural Resources (MDNR) (collectively State Agencies) filed joint comments in support of MP's petition.

On February 26, 2002, MP filed its response to the Commission's January 18, 2002 Notice of Comment Period (Notice) requesting comments on the legal standards and procedural standing of the current docket as well as Docket No. E015/AI-01-1988 (Generating Station Transfer). MP requested that the Commission consider the current docket separately from the Generating Station Transfer docket.

On February 27, 2002, the DOC filed comments in response to the Commission's January 18, 2002 Notice indicating, among other things, that the DOC would have no objection to combining the current docket with the Generating Station Transfer docket.

This matter came before the Commission on April 11, 2002.

FINDINGS AND CONCLUSIONS

I. The Petition

The Petition arises out of LTV's recent bankruptcy and its decision to divest itself of all Minnesota properties. MP's subsidiary, RRTH, together with Cliffs purchased substantially all of the assets of LTV through the Asset Purchase Agreement (APA)¹. Among other things, RRTH acquired the right to purchase or assign the right to purchase the LTV Transmission Facilities between Taconite Harbor and Hoyt Lakes.² (RRTH also purchased LTV's Taconite Harbor generation station, along with real estate and other contractual rights. The generating station purchase will be considered in Docket No. E015/AI-01-1988).

RRTH assigned its right to purchase the Transmission Facilities to MP through the Transmission Assignment Agreement between MP and RRTH. This Transmission Assignment Agreement is an affiliated interest agreement and requires Commission approval.³

Further, MP's purchase of the transmission facilities requires this Commission's approval.⁴

Another agreement (the Omnibus Agreement) between Cliffs, RRTH, and MP allocates responsibilities arising out of the APA. This agreement contains certain provisions that constitute an affiliated interest agreement also requiring Commission approval. These are the transfer by RRTH to MP of certain easements and permit rights to use the transmission facilities, and the transfer by RRTH to MP of its rights to certain water control facilities on Colby Lake, which are unrelated to the transmission facilities.

¹ The APA is not at issue in this proceeding.

² The Transmission Facilities purchased under the APA include all high voltage transmission lines, poles, wires, and appurtenant structures, the Taconite Harbor Substation and other associated assets and real estate interests extending from the Taconite Harbor Plant to the closed LTV mine near Hoyt Lakes. These assets differ from the assets being conveyed to MP only in that MP will not purchase the generator step-up transformers, which will remain with RRTH.

³ Minn. Stat. § 216B.48.

⁴ Minn. Stat. § 216B.50.

MP indicated that it intended to include the Transmission Facilities assets in rate base and would seek recovery of the cost of this acquisition through rates in its next rate case. MP allocated \$4,392,245.81 to the cost of the Transmission Facilities.

After receiving all required regulatory approvals the following would occur: 1) RRTH will pay LTV for all property to be purchased by RRTH or its assignee, including the Transmission Facilities; 2) RRTH will assign its rights to purchase the Transmission Facilities to MP; 3) MP will reimburse RRTH approximately \$4.4 million for amounts paid by RRTH to LTV for the Transmission facilities; and 4) LTV will transfer title to the Transmission Facilities to MP.

II. The Legal Standards

Transactions between public utilities and their affiliates are governed by Minn. Stat § 216B.48 and Minn. Rules, Parts 7825.1900-7825.2300.

Minnesota Statutes § 216B.48, subd. 3 states in part:

...The commission shall approve the contract or arrangement made or entered into ...only if it clearly appears and is established upon investigation that it is reasonable and consistent with the public interest.

A petition for approval must normally include documentation of the cost of providing the goods and services which are the subject of the contract. It must also include a copy of the proposed contract, a list and narrative description of all outstanding contracts between the utility and the affiliate, an explanation of why the contract is in the public interest, a description of any competitive bidding process used in awarding the contract, and an explanation of any decision not to use competitive bidding. Minn. Rules, Part 7825.2200 B.

Utilities are required to maintain detailed records of their transactions with affiliates, including ledgers and documentation showing on a monthly basis all payments made under each contract and the cost to the affiliate of providing the good or service for which each payment was made. Minn. Rules, Part 7825.2300.

Minn. Stat. § 216B.50 provides in part that a utility shall not purchase any “plant as an operating unit or system... for a total consideration in excess of \$100,000” unless the Commission finds “that the proposed action is consistent with the public interest.”

Minnesota Rules parts 7825.1800(B) and 7825.1400, in part, set forth filing requirements for capital structure approval.

III. Position of the Parties

A. MP

1. Public Interest

MP requests that the Commission approve the affiliated interested agreements and the purchase of the transmission facilities, as set forth in Section I, herein.

MP argued that the purchase of the Transmission Facilities is in the public interest for several reasons: 1) they serve a critical role in providing reliability of service to customers in the Arrowhead region of Minnesota and 2) they provide an outlet for the Taconite Harbor Plant as required by FERC Order 888.

Ownership of these facilities by MP would assure maintained reliability to MP's customers and other communities located on the North Shore from the Two Harbors area to the Canadian border, which are served by this transmission loop. It would insure a redundant transmission source to serve local area loads during unplanned outages and would allow for flexibility in scheduling maintenance on the transmission loop between Duluth and Taconite Harbor and on to Hoyt Lakes.

2. Purchase Price

MP argued that the purchase price is reasonable. To build a similar dual circuit 138 kV transmission line would cost approximately \$15.5 to \$18.6 million. In addition, MP's assessment of the value of these assets on a net present value basis is over \$5 million.

3. Request for Variance

Minn Rules Part 7825.1400 and 7825.1800 require disclosure of additional information which is pertinent to capital structure filings and for the purpose of investigating the issuance of securities. MP argued that these rules have no direct relevance and no application to ascertaining the reasonableness of the acquisition of the Transmission Facilities. It argued that the public interest would not be adversely affected and no other applicable law or statute would be violated if this information is not provided.

B. DOC

1. Public Interest

The DOC considered the reasons set forth by MP, addressing the reasonableness of this assignment of transmission facilities from RRTH to MP, to be consistent with the public interest.

2. Reasonableness of Price

The DOC concluded that MP's proposed allocation of the acquisition costs to the transmission facilities assigned from RRTH to MP appeared to be reasonable. However, the DOC reserved the right to address the issue of this acquisition cost in MP's next rate case.

3. Variance

The DOC agreed with MP that the capital structure related information is not needed to assess the reasonableness of this proposal. The DOC indicated that since no securities would be issued as a result of this proposal and there will be no assumption of liability, Minn. Rules part 7825.1400 F through J are irrelevant. The DOC recommended that a variance be granted.

4. Recommendations

The DOC recommended that the Commission approve the assignment and allocated acquisition cost of the LTV Transmission Facilities transfer from LTV to MP. It recommended that the Commission decide the issues of whether the acquisition cost is appropriate to include in rates and the determination of whether LTV's transmission facilities are used and useful in MP's next rate case.

Further, the DOC recommended that the interconnection agreement be accepted⁵, that the Commission approve the Omnibus Agreement, specifically the transfer by RRTH to MP of certain easements and permit rights to use the transmission facilities and the transfer by RRTH to MP of its rights to certain water control facilities on Colby Lake, with the condition that MP account for the water control facilities and any related costs as non-utility assets, at least until its next rate case.

The DOC recommended that any comments on the economic development rate be deferred until MP's filing is made and recommended that a copy of the State Master Agreement⁶ be provided by MP in the future filing of the economic development rate.

⁵ The DOC does not by its comments address the jurisdiction of the interconnection agreement as being under FERC or this Commission.

⁶ An agreement entered into by Cliffs, RRTH, MP, the IRRRB, the Pollution Control Agency, the Department of Natural Resources and the Department of Revenue designed to protect the state's interests within the LTV bankruptcy proceeding while also serving to further the parties' intent to foster economic development in Northeastern Minnesota.

If the Commission were not to allow RRTH to assign MP the right to purchase the LTV generation facilities⁷, the DOC recommended that the Commission require MP to file an affiliated interest agreement for the operation, maintenance and management of the LTV facilities on behalf of RRTH and explain why competitive bidding would not be necessary.

C. Joint Comments of the Minnesota Office of the IRRRB, the MPCA and the MDNR

The State Agencies argued that because the acquisition of the assets previously owned by LTV provides significant benefits to the State and helps minimize the damage caused by LTV's bankruptcy it is in the public interest. They urge the Commission to grant MP's petition.

The IRRRB supports the control over the Taconite Harbor generating station and transmission assets by MP and its affiliates because it believes that the arrangement will result in additional jobs in the Iron Range region and will help position the former LTV mine site as an attractive economic development site.

Th MPCA supports the petition because it has received commitments from MP that it will upgrade certain emission-related improvements at the Taconite Harbor facility to help minimize air pollution.

The MDNR supports the petition because of Cliffs' commitments to handle the closure of the mine site pursuant to a negotiated closure plan which could relieve the state of an expense that could exceed \$70 million.

IV. Commission Action

The Commission is in agreement with the parties that the assignment of the LTV Transmission Facilities from RRTH to MP is reasonable and consistent with the public interest. For this reason the Commission will approve the assignment and the allocated acquisition cost of the LTV Transmission Facilities from LTV to MP with the recommendations of the DOC as set forth in section IIIB herein.

However, the Commission will require further substantiation of the value of the land received in the purchase from the bankruptcy court. The Commission recognizes that the unregulated land component is integral in arriving at the amounts allocated to the regulated transmission facilities and for this reason will direct that MP supply within 90 days of this Order, on a compliance basis, further substantiation of the land values. The Commission will also require MP to file journal entries as an informational compliance document.

⁷ To be considered by the Commission in Docket No. E015/AI-01-1988, *In the Matter of Minnesota Power's Petition for Approval of Intra-Company Transfer of Taconite Harbor Electric Generation Station and Associated Assets from Rainy River Energy Corporation- Taconite Harbor to Minnesota Power.*

Finally, the Commission notes that rate recovery of costs incurred in transactions with affiliates is subject to continuing review under Minn. Stat. § 216B.48, subds. 5 and 6, and that today's decision does not preclude the raising of issues regarding the transfer in subsequent MP rate proceedings.

ORDER

1. The petition is approved as recommended by the Department of Commerce, with the following modifications:
 - MP shall supply further substantiation of the land values within 90 days of this Order on a compliance basis;
 - the question of an overall operation agreement for the Taconite Harbor generating station is deferred to Docket E015/AI-01-1988;
 - MP shall file journal entries, as an informational compliance document, recording the transmission assets on the books of MP within 90 days of the completion of the transfer;
 - the Commission's decision does not preclude the raising of issues regarding the transfer in subsequent MP rate proceedings.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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